IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.436 of 1992

Decided on: November 23, 2007

State of H.P. **…Appellant**

Versus

Anil Kumar and another **…Respondents**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the appellant : Mr. D.S. Nainta, Dy. Advocate General.

For the respondents : Mr. Anup Rattan, Advocate.

Surjit Singh, Judge (oral)

State has filed this appeal against the judgment of Sessions Court, whereby respondents Anil Kumar and Manjit Singh, who were sent up for trial for an offence, under Section 333 of the Indian Penal code, have been acquitted of the charge under the said provision of the Indian Penal Code, but convicted of the offence under Section 325 of the Indian Penal Code and sentenced to undergo imprisonment till the rising of the Court and to pay a fine of Rs.300/- each.

2. Appellant's grievance is that evidence on record proves the charge under Section 333 I.P.C. against both the respondents and, therefore, they should have been convicted of the said offence and awarded deterrent punishment. In the alternative, it is stated that the punishment for offence, under Section 325 IPC awarded by the trial Court is ridiculous and the respondents should be awarded suitable punishment.

Whether reporters of the local papers may be allowed to see the judgment?

3. We have gone through the record and heard the learned Deputy Advocate General as also the learned counsel for the respondents. We may notice that vide order dated 31.8.2007, we issued a notice to the respondents calling upon them to show cause why the sentence be not enhanced. Today, we have heard the parties not only with respect to the plea of the State for converting the conviction of the respondents from the offence under Section 325 IPC to the offence under Section 333 IPC, but also on our notice for enhancement of sentence.

4. As per record, respondent Manjit Singh, who was engaged by respondent Anil Kumar to drive his taxi (Maruti Van), parked the said taxi at Bus Stand Dharamsala at the site meant for parking the buses entering the bus stand campus. Soon PW-2 Bidhi Chand, a driver of Himachal Road Transport Corporation, reached there with his bus. He wanted to park the bus at the site where the taxi had been parked, because there was no other space available. He asked respondent Manjit Singh to move aside the taxi. Respondent Manjit Singh did not agree to that. Then an altercation took place between Manjit Singh and PW-2 Bidhi Chand. In the meanwhile, Anil Kumar, the owner of the taxi reached there and he dealt a fist blow on the mouth of Bidhi Chand (PW2), as a result of which two of his teeth got broken. Bidhi Chand reported the matter to the police immediately. At 9.20 P.M he was got medically examined. His two teeth were found broken, in the course of medico legal examination. Those teeth had been picked up by Bidhi Chand (PW2) from the spot and were handed over by him to the police at the time of lodging of FIR.

5. Respondents took the plea that Bidhi Chand (PW2) was drunk and he picked up quarrel with the respondents without any cause and also started scuffling with respondent Manjit Singh and in that process he fell on the head light of the taxi and it was because of such fall that his teeth were broken.

6. Trial Court returned the finding that Anil Kumar caused the breaking of the teeth of PW-2 Bidhi Chand by hitting him on his mouth with his fist and the two respondents had a common intention to commit the crime. However, the trial Court held that the injury was not caused by the respondents to Bidhi Chand (PW2) in the discharge of his duties as public servant and consequently, convicted them under Section 325 read with Section 34 IPC and sentenced them, as aforesaid.

7. Respondents have not challenged their conviction for offence, under Section 325 IPC by filing an appeal. We have perused the record. Testimony of PW-2 Bidhi Chand that he was dealt fist blows on his mouth by respondent Anil Kumar is corroborated by medical evidence, i.e., the testimony of PW-1 Dr. R.S. Verma and PW-9 Dr. Bharat Bhushan. As per testimony of these two doctors, two teeth of Bidhi Chand (PW2) had got broken as a result of use of force. Corresponding injuries on his lips were also noticed. However, Bidhi Chand (PW2) was found having consumed alcohol at the time of his medico legal examination, even though it was observed that he was not under the influence of liquor when examined.

8. Evidence that injury was caused to Bidhi Chand PW-2 in the discharge of his duties as driver of HRTC or say a public servant, is doubtful. It appears that the bus was already parked when respondent Manjit Singh reached the bus stop in his taxi. It is testified by Bidhi Chand (PW-2) himself that when he reached the bus stand and was going to park the bus, taxi driven by Manjit Singh entered the campus of bus stand and the said taxi was parked in front of his bus. This is contrary to the earliest version wherein it is stated that taxi was already parked when the bus entered the campus of the bus stand.

9. In view of the above discussion, we dismiss the appeal filed by the State for changing the conviction of the respondents from the offence, under Section 325 IPC to the offence under Section 333 IPC.

10. From the evidence on record, we also find that conviction of respondent Manjit Singh even for offence, under Section 325 IPC with the aid of Section 34 IPC is unwarranted. Per testimony of Bidhi Chand (PW2), respondent Manjit Singh was having altercation with him when Anil Kumar came there and immediately on his reaching the spot, he (Anil Kumar) dealt a blow on his mouth. The statement suggests that the two respondents did not have any premeditation and, therefore, Section 34 of the Indian Penal Code could not have been pressed into service by the trial Court to convict respondent Manjit Singh. We, therefore, acquit him of the offence, under Section 325 read with Section 34 IPC.

11. As regards respondent Anil Kumar, we are of the considered view that the punishment awarded to him by the trial Court is grossly inadequate. Offence of voluntarily causing grievous hurt is punishable with imprisonment which may extend upto seven years and fine, but the trial Court has let respondent Anil Kumar off with imprisonment till the rising of the Court and a fine of Rs.300/- only. When we were deliberating on the question of quantum of sentence, we were told that the injured is no more because he has died a natural death. Learned counsel representing respondent Anil Kumar submitted that sending respondent Anil Kumar to jail at this belated stage, i.e., more than 12 years after the commission of the crime, would not only be too harsh for him, but would also serve no useful purpose and that instead of sending him to jail, he may be ordered to pay some compensation to the legal representatives of the injured. After consulting the said respondent telephonically, the learned counsel says that compensation of Rs.75,000/-, may be awarded and the respondent be permitted to pay the amount of compensation in

monthly instalments of Rs.5000/-, beginning from 1st December, 2007. We accept the aforesaid proposal of the learned counsel and while dismissing the appeal for enhancement of punishment filed by the State (as against respondent Anil Kumar because respondent Manjit Singh has been ordered to be acquitted hereinabove), award a compensation of Rs.75,000/- to the legal representatives of injured Bidhi Chand PW-2 (since deceased) and order that the aforesaid amount of compensation shall be paid by respondent Anil Kumar to the legal representatives of said Bidhi Chand (PW2) in monthly instalments of Rs.5000/- each and first such instalment shall be paid in the first week of December, 2007 and the remaining instalments by 10th day of every succeeding month and the payment shall be made by depositing the instalments in the trial Court. In case default is made in any instalment, the entire amount due at the time of such default shall become recoverable at once, in accordance with the procedure laid down for recovery of arrears of land revenue and trial Court shall initiate such process.

12. Amount of fine of Rs.300/-, if already deposited by the acquitted respondent Manjit Singh, shall be refunded to him.

13. Trial Court shall send notices to the legal representatives of Bidhi Chand (PW2) informing them about the deposit/recovery of the amount of compensation and shall pay the compensation to them, according to their shares, as per rules of succession.

14. The appeal is disposed of in the aforesaid terms.

(Surjit Singh), J

November 23, 2007(ss) **(Surinder Singh), J.**